

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

43.412 ACRES OF LAND, MORE OR LESS,  
SITUATE IN HIDALGO COUNTY, STATE  
OF TEXAS, HIDALGO COUNTY  
IRRIGATION DISTRICT NUMBER 2, *et al.*,  
*Defendants.*

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CIVIL ACTION NO. 7:20-cv-00239

**JOINT MOTION FOR LEAVE OF COURT TO MODIFY SCHEDULING ORDER  
DEADLINES**

Plaintiff, United States of America (“United States”), and Defendants Hidalgo County Irrigation District No. 2 (“HCID2”) and City of Pharr, Texas (“City of Pharr”) (collectively, hereafter “the Parties”) file this joint motion for leave of Court<sup>1</sup> and pursuant to Federal Rule of Civil Procedure 16(b)(4), respectfully request to modify the Court’s existing Scheduling Order<sup>2</sup> and extend for ninety (90) days all existing deadlines. In support of this motion, the Parties show the following:

**I. BACKGROUND**

1. On August 25, 2020, pursuant to the Declaration of Taking Act (40 U.S.C. § 3114), and Federal Rule of Civil Procedure 71.1, the United States filed a Complaint in Condemnation<sup>3</sup> and a Declaration of Taking<sup>4</sup> to acquire a fee simple interest in land, identified as Tracts RGV-

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<sup>1</sup> As a preliminary matter, the Parties note that the deadlines made the basis of this motion have not passed, but by order of the Court, file this motion for leave of Court to request that deadline extensions by modification to existing Scheduling Order. *See* Dkt. No. 19 at 3 (the existing scheduling order “shall not be modified except by leave of Court upon showing of good cause[ ]”).

<sup>2</sup> Dkt. Nos. 19, 28.

<sup>3</sup> Dkt. No. 1.

<sup>4</sup> Dkt. No. 2.

WSL- 1002, RGV-WSL-1034-2, and RGV-WSL-2021, for purposes of the Border Infrastructure Project.<sup>5</sup>

2. On August 27, 2020, the United States deposited the estimated just compensation into the registry of the Court for the taking of Tracts RGV-WSL-1002, RGV-WSL-1034-2, and RGV-WSL-2021.<sup>6</sup>

3. As part of this condemnation action, the United States identified HCID2 as having an interest in the just compensation to be paid for the taking of Tracts RGV-WSL-1002, RGV-WSL-1034-2, and RGV-WSL-2021; and Unknown Owners as having an interest in Tracts RGV-WSL-1034-2 and RGV-WSL-2021.<sup>7</sup>

4. On October 26, 2020, the Court added the City of Pharr as party defendant to this action by virtue of having an interest in the just compensation to be paid as to Tract RGV-WSL-2021, only.<sup>8</sup>

5. The United States has served all named defendants in this action with notice of this condemnation action as permitted under Federal Rule of Civil Procedure 71.1(d)(3).<sup>9</sup>

6. On October 29, 2020, HCID2 filed its “Answer, Demand for Adequate Compensation, and Demand for Jury Trial.”<sup>10</sup> City of Pharr filed its “Answer, Demand for Adequate Compensation, and Demand for Jury Trial” November 2, 2020.

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<sup>5</sup> Schedules “C,” “D,” & “E,” Dkt. Nos. 1-1 at 6-14; 2-1 at 6-14.

<sup>6</sup> Dkt. No. 5 at 1. The filing of the Declaration of Taking and deposit of estimated just compensation immediately vested title in the United States to Tracts RGV-WSL- 1002, RGV-WSL-1034-2, and RGV-WSL-2021. *See* 40 U.S.C. § 3114(b)(1).

<sup>7</sup> *See* Schedule “G,” Dkt. No. 2-1 at 81.

<sup>8</sup> Dkt. No. 11 at 1-2. The Court also dismissed party defendant Pablo “Paul” Villarreal, Jr., Hidalgo County Tax Assessor-Collector, as unnecessarily or improperly joined under Federal Rule of Civil 71.1(i)(2). *Id.*

<sup>9</sup> *See* Dkt. No. 8 (HCID2’s Waiver of Service); Dkt. No. 14 (City of Pharr’s Waiver of Service); and Dkt. No. 24 (Certificate of Publication as to Unknown Owners).

<sup>10</sup> Dkt. No. 15.

7. On October 30, 2020, the United States and Defendants HCID2 and City of Pharr filed their Joint Discovery Plan<sup>11</sup> with the Court, proposing a discovery deadline date of August 27, 2021.<sup>12</sup>

8. On November 3, 2020, the Court entered a Scheduling Order<sup>13</sup> which set a January 10, 2021 deadline for the United States to “file amended condemnation documents or amended schedule of interested parties.”<sup>14</sup> The Court emphasized the importance of this deadline to the parties<sup>15</sup> and noted that the scheduling order deadlines are binding on all parties, and *shall not be modified except by leave of Court* upon showing of good cause.”<sup>16</sup>

9. On January 12, 2021, the Court granted the United States’ Unopposed Motion to Extend Scheduling Order Deadline to Amend Pleadings<sup>17</sup> and continued the “[d]eadline to file all documentation adding, substituting, disclaiming, or dismissing interested parties’ from January 10, 2021, to **March 11, 2021.**”<sup>18</sup> The Court granted a 60-day extension to permit the United States and HCID2 to meet on January 21, 2021 and confer about the border infrastructure planned for the Carlson Lake segment of Tract RGV-WSL-1002.<sup>19</sup> During this period, the United States and HCID2 intended to negotiate the property interests in land and additional interests in water necessary for the installation of border infrastructure within Carlson Lake, and file all necessary amended pleadings by the March 11, 2021 deadline.<sup>20</sup> No other deadlines were modified by the January 12, 2021 Order.<sup>21</sup>

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<sup>11</sup> Dkt. No. 16.

<sup>12</sup> Dkt. 16 at 4, §13.

<sup>13</sup> Dkt. No. 19.

<sup>14</sup> Dkt. No. 19 at 2.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 3 (emphasis added) (footnotes omitted).

<sup>17</sup> Dkt. No. 25.

<sup>18</sup> Dkt. 26 at 2.

<sup>19</sup> *Id.* at 1.

<sup>20</sup> *Id.* at 1-2.

<sup>21</sup> *Id.* at 2.

10. On March 8, 2021, the Parties jointly moved the Court to extend all nine remaining Scheduling Order deadlines<sup>22</sup> due to the pending 60-day pause under the January 20, 2021 Presidential Proclamation<sup>23</sup>, which temporarily paused all construction activities and funding of border infrastructure.<sup>24</sup> The Parties noted that the United States and HCID2 met as scheduled on January 21, 2021 to present and discuss the planned design concept for the installation of infrastructure within the Carlson Lake segment of RGV-WSL-1002.<sup>25</sup> However, finalized design plans and negotiations of property interests for the Carlson Lake segment of RGV-WSL-1002 were paused due to the uncertainty as to the United States' continued use of the Subject Tracts taken in this case.<sup>26</sup> Because the expected plan for redirection of funds would substantially impact the Parties' determination of just compensation to be paid in this case, the Parties requested a 90 day extension to all existing deadlines pending completion of said plan.<sup>27</sup>

11. On March 11, 2021, the Court granted the Parties' joint motion in part and only extended the "[d]eadline to file all documentation adding, substituting, disclaiming, or dismissing interested parties" from March 11, 2021, to **April 23, 2021**.<sup>28</sup> The Court denied the Parties' request to extend all other remaining deadlines and provided that "[t]he Court's November 3, 2020 scheduling order is otherwise unmodified."<sup>29</sup>

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<sup>22</sup> Dkt. No. 27.

<sup>23</sup> Pres. Proc. No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/>.

<sup>24</sup> Dkt. No. 27 at 4, ¶ 12; at 5, ¶ 14.

<sup>25</sup> *Id.* at 4, ¶ 12.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 4-5, ¶¶ 13-14.

<sup>28</sup> Dkt. No. 28 at 3.

<sup>29</sup> *Id.*

**II. REQUEST FOR LEAVE OF COURT TO MODIFY EXISTING SCHEDULING ORDER DEADLINES**

12. Sixty days have now passed since the date of the proclamation and a plan for redirection of funds has not been completed.<sup>30</sup> The United States continues to await guidance on whether it will be allowed to proceed with construction of border infrastructure within the Subject Tracts, and additionally, guidance on whether it will be allowed to condemn additional property interests within the Carlson Lake segment of Tract RGV-WSL-1002. The Parties note that a significant portion of construction operations prior to the 60-day pause took place within Subject Tracts RGV-WSL-1034-2 and RGV-WSL-2021. After the January 20, 2021 pause on construction operations, border infrastructure remains incomplete and through no fault of the Parties, has impacted HCID2 and City of Pharr's operations and use of the Subject Tracts and adjacent lands owned by Defendants.

13. Further, until the plan of redirection of funds is in place, the impact construction will have on the Parties' determination of just compensation in this action remains unknown and should the United States continue to construct infrastructure and the Parties agree on proposed infrastructure within Carlson Lake, additional takings will be required—including amendment of the Declaration of Taking to accommodate the newly proposed infrastructure. As a result, the Parties' expert reports also will not be complete by the June 25, 2021 deadline. The Parties' cannot in good faith resolve the issue of just compensation in this case under the existing Scheduling Order deadlines, thus, good cause exists for modification by the Court.

14. Accordingly, the Parties respectfully request leave of Court to file this request to modify the existing Scheduling Order, and as good cause provide that a 90 day extension to all existing deadlines which in turn will allow the Parties sufficient time to amend pleadings if

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<sup>30</sup> See *supra* note 23, at 4.

necessary after a plan for redirection of funds is complete; allow the Parties to designate experts and to exchange expert reports with sufficient time to depose experts and individuals identified as having an interest in this consolidated action; and will allow sufficient time for the Parties to attempt to resolve the issue of just compensation without a trial.

15. This request by the Parties is made in good faith and not for the purpose of delay.

Respectfully submitted,

**FOR DEFENDANTS:**

**FOR PLAINTIFF:**

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**CERTIFICATE OF SERVICE**

I certify that on April 23, 2021, a copy of the foregoing document was served on counsel  
for Defendants via CM/ECF notice of electronic filing.

*s/ Baltazar Salazar*  
**Baltazar Salazar**  
Assistant United States Attorney